

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

PAINTERS DISTRICT COUNCIL NO. 58,	)	
et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 4:16CV00514 AGF
	)	
HARMS-TROESSER CONSTRUCTION	)	
CO., and RICHARD HARMS, individually,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiffs' motion for an order compelling Defendants Harms-Troesser Construction Co. and Richard Harms to account to Plaintiffs, by means of an audit, for all amounts owing to Plaintiffs as a result of delinquent payments to employee benefit funds under the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA"). Harms is sued based upon a personal guarantee he signed with the union agreeing to be personally liable for any ERISA delinquent payments due to Plaintiffs, including assessed damages and costs.

On May 27, 2016, the Clerk of Court entered default against both Defendants. Plaintiffs now seek an accounting so that they can determine the amount of Defendant's liability. Defendant has not responded to the motion.

Requiring an audit is an appropriate form of relief in an ERISA case for delinquent benefits where the amount of the delinquency is not known. *Int'l Painters & Allied Trades Indus. Pension Fund v. R.W. Amrine Drywall Co.*, 239 F. Supp. 2d 26, 33 (D.D.C.

2002) (stating that an audit “promote[s] the legislative intent of ERISA”); *Maguire v. Am. Piles, Inc.*, No. 01 CIV. 9483 (DLC), 2002 WL 31626972 (S.D.N.Y. Nov. 21, 2002).

Accordingly,

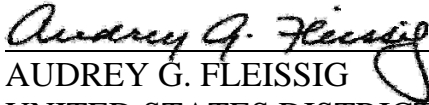
**IT IS HEREBY ORDERED** that Plaintiffs’ motion for an Order compelling an accounting is **GRANTED**. (Doc. No. 12.)

**IT IS FURTHER ORDERED** that within 14 days of the receipt of this Memorandum and Order, Defendants shall submit their individual compensation records, payroll registers, payroll journals, time-cards, federal and state tax forms, W-2 forms and 1099 forms, state quarterly tax returns, workers compensation reports, fringe benefit records and reports, job cost records, general ledger, with cash disbursements and supporting documents, accounts receivables, invoices, and check stubs for the period of September 1, 2013, through the present to Plaintiffs for review and copying, so that Plaintiffs can calculate the total outstanding contributions and damages owed by Defendants. **Failure to comply with this Order may result in a finding of civil contempt and the imposition of sanctions, including a fine and/or incarceration of Defendant Harms.**

**IT IS FURTHER ORDERED** that Plaintiffs shall effect service of this Memorandum and Order on Defendants by whatever means they believe to be most effective, and shall promptly file a certificate of such service.

**IT IS FURTHER ORDERED** that Plaintiffs shall have 14 days after completion of the accounting to file a properly supported motion for default judgment. If said motion

is not filed prior to **August 12, 2016**, Plaintiff shall file a status report with the Court on or before that date.

  
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AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 8th day of July, 2016